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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,109	09/04/2001	James Arthur Smith	213267US0PCT	2383
22850	7590	04/06/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			JUSKA, CHERYL ANN	
		ART UNIT	PAPER NUMBER	
		1771		

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/926,109	SMITH ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Cheryl Juska	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 12 January 2004.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-8 and 11-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 and 11-21 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's amendment filed January 12, 2004, has been entered. Claim 15 has been amended as requested. The pending claims are 1-8 and 11-21.
2. Said amendment is sufficient to withdraw the 112, 2<sup>nd</sup> rejection of claim 15 as set forth in section 5 of the last Office Action.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-3, 7, 8, 11, 12, and 14-17 stand rejected under 35 USC 103(a) as being unpatentable over JP 58-152037 assigned to Sumitomo Chemical Co., as set forth in section 7 of the last Office Action.
5. Claim 4 stands rejected under 35 USC 103(a) as being unpatentable over the cited Sumitomo reference in view of US 6,162,848 issued to Lattime et al., as set forth in section 8 of the last Office Action.
6. Claim 5, 6, 13 stand rejected under 35 USC 103(a) as being unpatentable over the cited Sumitomo reference in view of US 5,851,625 issued to Smesny et al., as set forth in section 9 of the last Office Action.

7. Claim 13 stands rejected under 35 USC 103(a) as being unpatentable over US 5,403,884 issued to Perlinski in view of US 5,851,625 issued to Smesny et al., as set forth in section 9 of the last Office Action.

8. Claims 18-21 stand rejected under 35 USC 103(a) as being unpatentable over the cited Sumitomo reference in view of JP 58-041972 assigned to Sumitomo, as set forth in section 10 of the last Office Action.

9. Claim 21 stand rejected under 35 USC 103(a) as being obvious over US 5,403,884 issued to Perlinski as set forth in section 11 of the last Office Action.

***Response to Arguments***

10. Applicant's arguments filed with the amendment of January 12, 2004, have been fully considered but they are not persuasive.

11. Applicant traverses the above 103 rejection based upon Sumitomo by asserting that the reference does not teach an adhesive binder for bonding layers of a carpet together (Amendment, page 9, 2<sup>nd</sup> paragraph). The examiner respectfully disagrees. Sumitomo teaches a latex composition that is employed for a carpet backing. Since the use of latexes in the carpet art is conventionally limited to adhesive backcoats, it is asserted that the composition disclosed by Sumitomo is an adhesive backcoat and not a secondary backing layer, as is implied by applicant. As is well known in the art, latex backcoats are used to bind tufts of pile yarns to a primary backing layer. Additionally, it is well known in the art that latex backcoats also function as an adhesive binder when a secondary backing is employed for binding said secondary backing to the tufted primary backing.

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12. Thus, as argued in the last Office Action, Sumitomo teaches the present claim limitation of a carpet having an adhesive backing of an aqueous dispersion of a mixture of polymer A, having 60-70% ethylene, and polymer B, having 100% mixture of a vinylaromatic (i.e., styrene) and a diene (i.e., butadiene). [Note applicant has not traversed the presently claimed composition is patentably distinct from that disclosed by Sumitomo.] However, Sumitomo fails to explicitly teach that the carpet is a tufted carpet having a tufted primary backing and a secondary backing adhered thereto by said adhesive. Applicant is hereby given Official Notice that conventional carpets are predominantly comprised of a woven polypropylene primary backing that is tufted with face yarns, an adhesive latex backing, and a secondary backing of a woven polypropylene fabric. Hence, it would have been obvious to one skilled in the art to employ the adhesive carpet backing of Sumitomo in a conventional tufted carpet having polypropylene primary and secondary backings. Therefore, applicant's arguments are found unpersuasive and the above rejections based upon Sumitomo are maintained.

13. With respect to the rejection of claims 18-21, applicant argues that the two cited Sumitomo references have the same assignee and were published around the same time (Amendment, page 10, 6<sup>th</sup> paragraph). As such, applicant asserts that if a lower amount of the ethylene-containing polymer were suitable for the Sumitomo '037 invention, it would have been disclosed therein. This argument is not necessarily valid since one can't speak for the inventors. Additionally, the standard for prior art is not necessarily what the inventor intended or did not intend, but rather what the prior art reference as a whole teaches or suggests to one of ordinary skill in the art. Thus, reviewing the prior art, one would be motivated to employ a lower amount in the Sumitomo '037 invention based upon the teachings of Sumitomo '972.

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14. Applicant traverses the rejections of claims 13 and 21 over Perlinski by asserting that the reference does not teach the presently claimed amount of polymer A (i.e., less than 10%), but rather teaches a minimum amount of 10% (Amendment, page 11, 2<sup>nd</sup> paragraph – page 12, line 2). As such, applicant argues it would not have been obvious to optimize the Perlinski range to the claimed ranged. In response, it is reiterated that a teaching of 10-100% suggests to one skilled in the art that an amount of less than 10% can be suitable also. Specifically, the amount of polymer A blended with polymer B is a result effective variable wherein the properties of each polymer that contribute to the blend are directly related to the amount of each polymer. As such, it would have been obvious to one skilled in the art to employ an amount less than 10% of polymer A. Additionally, it is noted that applicant has not shown any criticality or unexpected results for the range claimed. Therefore, the rejections based upon Perlinski are hereby maintained.

15. With respect to applicant's arguments regarding the superior results obtained with the invention (Amendment, page 8, 3<sup>rd</sup> paragraph), it is asserted that the working and comparative examples disclosed in the specification are not sufficient evidence of unexpected results in that the comparative examples are not commensurate with the closest prior art. Therefore, applicant's arguments are unpersuasive.

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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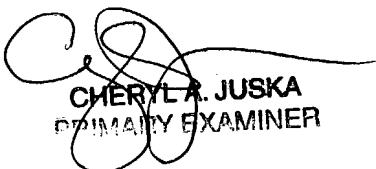
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cj  
April 1, 2004

  
CHERYL A. JUSKA  
PRIMARY EXAMINER